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March 7, 2014

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Electronically Filed

Re: CC Docket No. 95-116; WC Docket No. 07-149; WC Docket No. 09-109

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., to submit for inclusion in the above captioned dockets the enclosed Request for NANC Dispute Resolution Concerning the Local Number Portability Administrator Request for Proposal and Selection Process.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact me.

Sincerely,



Aaron M. Panner

Enclosure

cc: Julie Veach
Jonathan Sallet
Phillip Verveer

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March 7, 2014

The Honorable Betty Ann Kane
Chairman, North American Numbering Council
Public Service Commission of the District of Columbia
1333 H Street, N.W. Suite 200, West Tower
Washington, DC 20005

**Re: Request for NANC Dispute Resolution Concerning the Local Number
Portability Administrator Request for Proposal and Selection Process –
EXPEDITED CONSIDERATION REQUESTED**

Dear Chairman Kane:

Neustar, Inc. ("Neustar") hereby initiates a formal dispute before the North American Numbering Council ("NANC"), pursuant to Sections 52.11(c)¹ and 52.26(b)(3)² of the Commission's rules, concerning the Local Number Portability Administrator ("LNPA") Request for Proposal ("RFP") and selection process. Neustar challenges aspects of the process: first, the FoNPAC's acceptance of at least one untimely initial proposal; second, the FoNPAC's failure to call for an additional round of proposals. Because the North American Portability Management LLC ("NAPM") has apparently communicated its final disposition of these two issues, NANC intervention is required. Neustar further requests the opportunity to be heard during the dispute

¹ See 47 C.F.R. § 52.11(c). Section 52.11(c) defines the NANC's general dispute resolution responsibility. This section requires the NANC to provide public notice of disputes and gives disputants the opportunity to be heard through both oral and written presentations to the full NANC.

² See 47 C.F.R. § 52.26(b)(3). For LNPA-related disputes, Section 52.26(b)(3) outlines a specific procedure. It requires that parties first attempt to resolve disputes among themselves, but it gives parties authority to seek resolution "under the auspices of the NANC" when necessary.

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resolution process through oral and written presentations to the NANC, as required by FCC regulations.³

This dispute presents two issues:

Issue 1: Whether offerors who failed to submit proposals in compliance with applicable deadlines should be disqualified.

Issue 2: Whether the FoNPAC should solicit another round of proposals before making its award recommendation to the NANC.

We believe the proper response to both of these issues is yes. Deadlines should not be retroactively changed to advantage one offeror without notice and the necessary administrative procedures. Nor should industry and consumers be denied the benefits of the best possible offer that would result from the consideration of additional proposals. But the combination of these two procedural deficiencies should be of special concern because it failed to ensure even-handed treatment of all participants in the process.

Background Facts

1. In October 2011, the NAPM issued an RFI.⁴
2. In August 2012, draft RFP documents were released for public comment, eight months in advance of the eventual submission deadline.⁵
3. On February 5, 2013, the RFP documents were finalized and released, 60 days prior to the April 5, 2013, submission deadline.⁶

³ See 47 C.F.R. § 52.11(b). If any party objects to the proposed resolution, the NANC must issue a written report summarizing the dispute and its recommendation, which is made public for comment.

⁴ See *Local Number Portability Database Platforms and Services: Request for Information Available*, Public Notice, CC Dkt. No. 95-116, WC Dkt. Nos. 09-109, 07-149 (rel. Oct. 14, 2012).

⁵ See *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, CC Dkt. No. 95-116, WC Dkt. Nos. 09-109, 07-149, DA 12-133 (rel. Aug. 13, 2012).

⁶ See 2015 LNPA VQS; 2015 LNPA RFP.

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4. On April 5, 2013, Neustar timely submitted its offer in reliance on the posted deadline.⁷

5. On April 5, 2013, an employee of a competing offeror posted on social media: “I am exhausted and still have to write the exec summary for this 85 page document. Coffee is failing. Been here 66 straight hours now. . . .”

6. On April 17, 2013—12 days after the deadline—NAPM notified potential offerors that: “Pursuant to the directions of the **Wireline Competition Bureau** of the Federal Communications Commission, the date and time set for receipt of initial proposals through the IASTA[®] SmartSource SRM[®] Tool, **ARE HEREBY EXTENDED** from April 5, 2013, until **11:59 p.m. EDT on Monday, April 22, 2013.**”⁸ The reason for granting this extension was not disclosed.

7. The NAPM’s website later stated that the deadline had been extended “with the consent of the FCC.”⁹

8. Neustar submitted its response to the FoNPAC’s initial best-and-final-offer (“BAFO”) request on September 18, 2013, reasonably anticipating that the FoNPAC would seek one or more rounds of additional proposals in the interest of fostering robust competition.

9. After a month had passed with no such request and with the November 14, 2013, scheduled recommendation to the NANC imminent, Neustar wrote the NAPM on October 21, 2013, and again on November 4, 2013, requesting that it invite a second round of proposals from all offerors and providing a copy of the proposal it was prepared to make.

10. Neustar received no response from the NAPM until January 24, 2014, when the NAPM informed Neustar that it would not consider Neustar’s proposal. The NAPM did not address Neustar’s request for an additional round of proposals from all offerors.

11. The interested parties have an outstanding disagreement as to whether it was appropriate to extend, without notice and required process, the original April 5, 2013, proposal deadline and whether the FoNPAC should invite additional proposals from all offerors; additional efforts among the parties to resolve the dispute would be futile.

⁷ See Letter of Aaron M. Panner, Counsel for Neustar, to Sean A. Lev, Julie A. Veach, Timothy Decker, and Mel Clay, CC Dkt No. 95-116, WC Dkt. Nos. 09-109, 07-149, at 3 (Apr. 24, 2013).

⁸ See E-mail from Timothy Decker, Co-Chair North American Portability Management, LLC to Sanford Williams (April 17, 2013 4:28 PM).

⁹ See North American Portability Management LLC, *NPAC RFI/RFP*, https://www.napmlc.org/pages/npacrfp/npac_rfp.aspx (last visited Mar. 6, 2014).

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I. NANC Intervention is Necessary to Resolve this Dispute.

The NANC has the authority to resolve this dispute.¹⁰ By regulation, the Commission has tasked the NANC with “[i]nitially resolving disputes, through consensus, that foster efficient and impartial number administration . . . by adopting and utilizing dispute resolution procedures that provide disputants, regulators, and the public . . . a reasonable opportunity to make oral and written presentations.”¹¹ In adopting this regulation, the Commission intended that the NANC be “the initial site for resolution of disputes relating to administration of the NANP.”¹² The Commission directs interested parties to attempt resolution of number portability issues among themselves; if they are unable to do so, parties are advised to resolve those issues “under the auspices of the NANC.”¹³ Because the parties have differences on issues that affect the fairness of the RFP process and that are fundamental to the NANC’s ability to evaluate the strongest set of proposals available, the NANC should resolve these issues before it considers any selection recommendation. To avoid delays in the LNPA selection, Neustar accordingly requests that the NANC give this dispute expedited consideration.

II. Untimely Proposals Should Not Be Considered.

The NANC should rule that any offeror that failed to meet any deadline for submission of proposals is disqualified. The FoNPAC’s after-the-fact extension of the April 5, 2013, deadline for submission of initial proposals improperly relieved late offerors of the obligation to comply with a basic rule of the RFP process and was unfair to offerors who submitted timely proposals.

¹⁰ See, e.g., Letter from John T. Nakahata, Counsel, Telcordia Technologies, Inc., to Thomas M. Koutsy, Chairman, North American Numbering Council (dated May 26, 2009). Neustar has also filed a petition for Declaratory Ruling with the FCC raising several concerns about the RFP process. See *Petition of Neustar for Declaratory Ruling Concerning the Local Number Portability Administration Selection Process*, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 12, 2014). The Chief of the Wireline Competition Bureau has indicated that questions going specifically to the propriety of the RFP process should be resolved by the NANC in the first instance. See Letter from Julie Veach, Chief of the FCC’s Wireline Competition Bureau, to the Hon. Betty Ann Kane, Chair of the North American Numbering Council (Feb. 11, 2014).

¹¹ 47 C.F.R. § 52.11(c); see also North American Numbering Council (NANC) Operating Manual, Version 3 (Dec. 10, 2013), available at http://www.nanc-chair.org/docs/FINAL_V3_NANC_Training_Binder_Dec102013.doc (“The Council will develop policy on numbering issues, initially resolve disputes, and select and provide guidance to the North American Numbering Plan (NANP) Administrator.”) (emphasis added).

¹² *Administration of the North American Numbering Plan; Toll Free Service Access Codes*, Third Report and Order and Third Report and Order, 12 FCC Rcd 23040, ¶ 11 (1997).

¹³ 47 C.F.R. § 52.26(b)(3).

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The extension of the April deadline – 12 days after it had passed – violated an express limitation on participation in the RFP process: the LNPA RFP provided that initial offers “***must be received*** on or before [April 5, 2013].”¹⁴

Such an after-the-fact rule-change to benefit a non-compliant offeror is improper. To the extent government procurement practices are instructive, they would preclude the consideration of late proposals.¹⁵ As the Court of Federal Claims and Government Accountability Office have recognized, the rule barring the consideration of late offers “alleviates confusion, ensures equal treatment of all offerors, and prevents an offeror from obtaining a competitive advantage that may accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors.” *Argencord Mach. & Equip., Inc. v. United States*, 68 Fed. Cl. 167, 173 (2005) (quoting *PMTech, Inc.*, B-291082, Oct. 11, 2002, 2002 CPD ¶ 172).¹⁶ Moreover, the rule precluding the acceptance of “late” proposals cannot be evaded by purporting to “extend” the deadline well after it had passed. *See Geo-Seis Helicopters, Inc. v. United States*, 77 Fed. Cl. 633, 645-46 (2007) (agency could not “render the ‘late is late’ rule a nullity” by extending the deadline, after it had passed, to accommodate an offeror who had failed to submit its proposal on time).

Here, the extension of the deadline for submissions, after it had passed, gives rise to an appearance of partiality and penalizes offerors who complied with the process. The NANC should accordingly preclude consideration of any proposal that was not submitted in compliance with all applicable deadlines.

¹⁴ 2015 LNPA RFP § 1.2 (emphasis added).

¹⁵ The NPAC contracts are between the industry and the LNPA and fulfill the industry’s statutory responsibility to provide local number portability. Because this is not a government procurement, government procurement rules as set out in the Federal Acquisition Regulations (“FAR”) do not govern the process.

¹⁶ The FAR provides that “[o]fferors are responsible for submitting proposals ... so as to reach the Government office designated in the solicitation by the time specified in the solicitation,” and that “[a]ny proposal ... received at the Government office designated in the solicitation after the exact time specified for receipt of offers ***is ‘late’ and will not be considered,***” absent limited circumstances not implicated here. FAR 52.215-(c)(3) (emphasis added); *see also* FAR 15.208(a)-(b) (same). Courts have routinely enforced these requirements. *See, e.g., Argencord Mach. & Equip., Inc.*, 68 Fed. Cl. at 173; *Conscoop-Conzorzia Fra Coop. Di. Prod. E Lavoro v. United States*, 62 Fed. Cl. 219, 239 (2004).

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III. The NANC Should Direct the FoNPAC To Solicit a Further Round of Proposals Before NANC Consideration of Any Recommendation.

The NANC should direct the FoNPAC to grant Neustar's request to solicit an additional round of proposals from all qualified offerors to secure the best available outcome to the selection process.

Neustar submitted its response to the FoNPAC's initial BAFO request on September 18, 2013. For reasons explained in its January 15, 2014 Letter to the FCC,¹⁷ Neustar reasonably anticipated that FoNPAC would seek additional proposals in the interests of fostering robust competition.¹⁸ When a month had passed without the FoNPAC making such a request and with the November 14, 2013 scheduled recommendation to the NANC imminent, Neustar sent a letter to the FoNPAC on October 21, 2013, to request that FoNPAC allow all offerors to submit further proposals. Neustar also provided a copy of the proposal it was prepared to make, which was more advantageous to industry and consumers.

The FoNPAC did not respond to Neustar's letter. Neustar therefore sent a further letter on November 4, 2013, to explain why seeking additional proposals would bring substantial benefits with no downside and would also be consistent with previous actions of FoNPAC. In mid-November, Neustar understood that additional bids would be solicited,¹⁹ but received no formal response from the NAPM until January 24, 2014, when it informed Neustar that it would not consider Neustar's proposal. The NAPM did not explain its apparent change of heart or address Neustar's request for an additional round of offers from all qualified participants.²⁰

The NAPM's refusal to solicit additional proposals is unjustified and contrary to the public interest. Neustar appropriately sought an opportunity to improve on a prior proposal, and the industry and consumers can only benefit if a further round of proposals is requested. Furthermore – and in sharp contrast to the extension of the initial deadline for submissions in April 2013 – nothing in the RFP governing the process precludes the FoNPAC from seeking a further round of proposals. To the contrary, Section 13.6 of the RFP gives the FoNPAC

¹⁷ See Letter of Aaron M. Panner, Counsel for Neustar, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. Nos. 09-109, 07-149 (Jan. 29, 2014).

¹⁸ See *id.*

¹⁹ Neustar's belief was based on information that may be covered by its non-disclosure agreement with the NAPM. Under the non-disclosure agreement, the NAPM is specifically permitted to share this information with NANC members. If this information has not already been shared, the NANC should ask to see it.

²⁰ Letter from Timothy Decker, Co-Chair, North American Portability Management LLC, to Steve Edwards, Senior Vice President, Neustar Inc. (Jan. 24, 2014).

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authority to promote competition through a multiple best-and-final-offer process.²¹ Moreover, although the draft RFP document contained language that would have restricted bidders' ability to request the opportunity to submit additional bids, that language was removed from the final RFP.

Furthermore, to the extent relevant, agencies frequently solicit multiple rounds of proposals (also referred to as "final proposal revisions") in conducting government procurements.²² In particular, agencies have the authority to solicit further proposals from bidders in response to a bidder's offer to improve its proposal.²³ "The public's interest is clearly served when suppliers engage in fair and robust competition Healthy competition ensures that the costs to [consumers] will be minimized." *SAI Indus. Corp. v. United States*, 60 Fed. Cl. 7331 (2004).²⁴

Failure to seek additional proposals in response to Neustar's request is contrary to the interests of consumers and the industry at large. Such a decision deprives the Commission of a complete record and full evaluation of all qualified proposals. A request for further proposals would provide assurance to all parties that the RFP process will have resulted in the selection of the best qualified vendor and the most competitive proposal. Consistent with its mission of acting in the public interest,²⁵ the NANC should act to ensure that the best available proposals are solicited from all offerors.

The NANC should grant this relief irrespective of its resolution of the first issue in dispute. In the event the NANC rules that proposals submitted pursuant to the retroactive

²¹ The draft RFP specifically reserved to the FoNPAC the right to conduct only a single best-and-final offer process. That language, however, was removed from the final RFP.

²² See, e.g., *Biospherics, Inc. v. United States*, 48 Fed. Cl. 1 (2000) (indicating that agency may reopen discussions after receiving final proposal revisions); *Antarctic Support Assocs. v. United States*, 46 Fed. Cl. 145 (2000) (noting without comment that agency reopened discussions and requested second BAFOs after receipt of first BAFOs); *United Int'l Investigative Servs. v. United States*, 42 Fed. Cl. 73 (1998) (court notes without objection or legal commentary that there were four rounds of BAFOs); *Marine Hydraulics, Int'l, Inc.*, B-403386.3, May 5, 2011, 2011 CPD ¶ 98; *Pemco Aeroplex, Inc.*, B-310372.3, June 13, 2008, 2008 CPD ¶ 126 at n.7.

²³ See *Burron Med. Prods., Inc.*, B-176407, Sept. 27, 1972, 1972 WL 6292 (Comp. Gen.).

²⁴ To the extent it is relevant, FAR 15.306(d)(2), which governs "discussions," including solicitation of final proposal revisions, provides: "The primary objective of discussions is to maximize the Government's ability to obtain best value" Consistent with that mandate, agencies often seek multiple rounds of final proposal revisions in order to obtain "best value."

²⁵ See NANC Guidelines & Operating Principles at 5 (Apr. 17, 2001).

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extension of the initial submission deadline may be considered, it is all the more important for the NANC to require the consideration of additional proposals from all offerors. The combination of an extension of the deadline for submissions – to benefit one or more offerors and without notice and the necessary administrative procedures – along with the denial of consideration of additional proposals for the benefit of industry and consumers undermines the appearance of even-handed treatment of all participants in the LNPA selection process. The NANC can alleviate this deficiency by advising the FoNPAC to accept another round of proposals.

* * *

For the foregoing reasons, Neustar requests that the NANC commence a formal dispute resolution proceeding under Section 52.26(b)(3) to address the LNPA selection process dispute prior to consideration of any recommendation regarding that selection and determine 1) whether any untimely LNPA contract offers should be considered and 2) whether the FoNPAC should request an additional round of proposals. Given that time is of the essence, Neustar also requests that the NANC expedite resolution of this dispute.

Process. Neustar asks that the NANC attempt to resolve this dispute at its next meeting. To that end, Neustar respectfully asks the NANC Chair to establish a schedule for comments to be filed regarding this dispute and that a short period be allowed for reply submissions afterward.

Sincerely,

A handwritten signature in dark ink, appearing to read "Aaron M. Panner", with a stylized flourish at the end.

Aaron M. Panner

cc: NANC Members
Todd Daubert, Esq.
Dan A. Sciullo, Esq.